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## US Supreme Court Decides Closely Watched Case on Class Certification in Securities Fraud Matters

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In a decision authored by Chief Justice Roberts, the US Supreme Court yesterday reversed the Fifth Circuit's decision certifying a class in a securities fraud class action brought under section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5. In reversing the Fifth Circuit, the Court let stand the "presumption of reliance," which permits plaintiffs in securities fraud class actions to satisfy the statutory reliance requirement by invoking a presumption that the price of stock traded in an efficient market reflects all public, material information, including material misstatements. See *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). However, the Court concluded that defendants could rebut this presumption of reliance at the class certification stage by introducing evidence that an alleged misrepresentation did not actually affect the market price of the stock. This decision helps clarify what evidence a court may consider in determining whether to certify a class in a securities fraud class action suit.

In its decision, the Court began by considering—and rejecting—Halliburton's argument that the Court should overrule *Basic*, thus requiring plaintiffs to prove actual reliance in all securities fraud claims under Rule 10b-5. After noting that all securities fraud plaintiffs must prove "reliance

upon the misrepresentation or omission,” the Court explained that, under the rule created in *Basic*, plaintiffs could satisfy the reliance element of a Rule 10b–5 action by invoking a rebuttable presumption of reliance. This presumption was based on the so-called “fraud-on-the-market” theory, which maintains that the market price of shares traded on developed markets reflects all publicly available information, including any material misrepresentations. The Court disposed of Halliburton’s challenge to the *Basic* presumption, finding that none of its arguments for overruling *Basic* so discredit the decision as to constitute a “special justification” for abandoning this longstanding precedent.

However, the Court agreed with Halliburton that defendants should have a chance to rebut the presumption of reliance prior to class certification (as opposed to waiting until the merits of the case were reached) with evidence of a lack of a price impact. *Basic* allows plaintiffs to establish price impact indirectly, by showing that a stock traded in an efficient market and that a defendant’s misrepresentations were public and material. But this indirect proxy, the Court determined, did not foreclose consideration of a defendant’s “direct, more salient evidence showing that the alleged misrepresentation did not actually affect the stock’s market price and, consequently, that the *Basic* presumption does not apply.” As such, the Court held that the Fifth Circuit erred by refusing to consider such price impact evidence when considering the predominance prerequisite for maintaining a class under Rule 23(b)(3).

In a brief concurring opinion, Justice Ginsburg, joined by Justices Breyer and Sotomayor, noted that advancing price impact consideration from the merits stage to the class certification stage may broaden the scope of discovery available at certification. She also emphasized that the Court’s decision would place the burden on defendants—not plaintiffs—to show the

absence of a price impact as part of the class certification process.

Justice Thomas, joined by Justices Scalia and Alito, concurred in the judgment but wrote separately to opine that the Court should have accepted Halliburton's invitation to overrule *Basic*.

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